



# Enforcement of national legislation on global social networks: mission impossible?

*Global Communications and National Policies:  
The Return of the State?*  
London, 16 June 2013

dr. Eva Lievens  
Research Fund Flanders  
Interdisciplinary Centre for Law & ICT

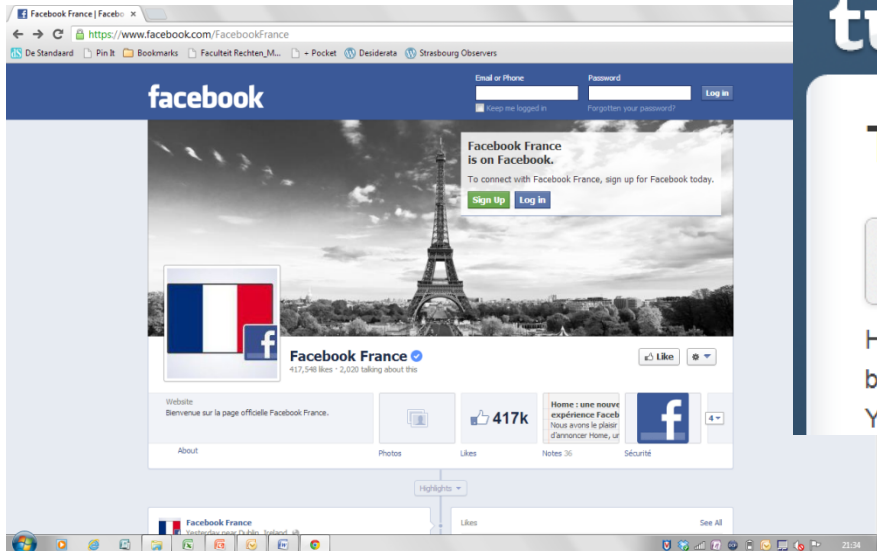
# Social networks, global reach...

## Social network sites (SNS)

→ *global* online space where opportunities and risks go hand in hand



**Tip** What you say on Twitter may be viewed all around the world instantly. You are what you Tweet!



**tumblr.** Follow the world's creators.

## Terms of Service

 Last Modified: 2012-03-22

Tumblr is a U.S. company and subject only to U.S. laws and jurisdiction, so for the moment these documents are only available in English.

Hi! You are now reading Tumblr's Terms of Service, meaning the contract between you and Tumblr when you use Tumblr's site, services, and products. You should read this carefully before you use Tumblr. We've tried to be fair

# When something goes wrong...



Acts of SNS  
providers are in  
breach of national  
legislation



Acts of SNS  
users are in  
breach of national  
legislation

*Global computer-based communications cut across territorial borders, creating a new realm of human activity and undermining the feasibility – and legitimacy – of laws based on geographic boundaries.*

David Johnson and David Post, Law and Borders – the Rise of Law in Cyberspace,  
1996, p. 1367

*Law and regulation have been organised on the assumption that activities are on the whole geographically delimited: the right to regulate conduct is shared out between geographically defined States on a predominantly geographic basis – each State can regulate what occurs within its territory.*

*So an inadequate system for allocating regulatory responsibility undermines the effectiveness of substantive laws, which is the underlying worry.*

Uta Kohl, Jurisdiction and the Internet, 2007, p. 4 & 8

# Jurisdiction

1. The right to prescribe law

2. The right to adjudicate disputes

3. The right to enforce the rules/  
judgment

**SNS provider  
in country A (*non-EU*)**



**Legislator / LEA / court  
in country B (*EU*)**

**Question 1: Is law of country B applicable to SNS provider?**

Country of origin ↔ country of destination (*‘directed at’*)



May lead to worldwide competence  
as SNS in principle direct their services  
to a global audience

**Question 2: Can dispute/case be brought before the court in country B?**

What about clauses in Terms of Use? Cf. Facebook/France

**Question 3: Can the judgment /order of country B be enforced against  
SNS provider of country A?**

Cf. Yahoo/France, Twitter/France (#unbonjuif)

# Cooperation?

- Private law
  - Willingness to apply foreign substantive law to disputes heard in local courts or to enforce judgments handed down in foreign courts
    - *EXCEPT*: when enforcement would be in conflict with public policy
  - In some cases: legal basis (e.g. Brussels I Regulation)
- Public law
  - Reluctance to apply foreign public or criminal laws or enforce foreign judgments



# Consequence?

Ineffectiveness of national/regional substantive legislation that aims to protect its citizens

Because...

- SNS providers reluctant to cooperate with (foreign) national authorities
- National authorities reluctant to cooperate with each other

# Remedies: what could States do?

- Harmonise legislation
- Cooperate with regard to enforcement
- Prosecute without enforcement (symbolically)
- Impose penalties/fines on related local parties
- Impose measures on intermediaries, other related services or end-users
- Block services
- OR...

# Alternative approaches?

- **Self-regulatory initiatives** have been set up by SNS providers in an attempt to minimise certain risks and make their services safer for users
  - *Safer Social Networking Principles for the EU*
  - *CEO Coalition for a Better Internet for Kids*
  - *ICT Principles Coalition*

BUT evaluations have shown that the commitments made by industry are often only implemented to a **limited extent**

# Conclusion

- Should **SNS providers** accept that ‘without pain there is no gain’?
- Should **governments**
  - improve international *cooperation*?
  - incentivise SNS providers to *implement self- (or co-) regulation in a legally compliant manner*?
- The importance of national / regional values & context...

# Thank you!



[eva.lievens@law.kuleuven.be](mailto:eva.lievens@law.kuleuven.be)

Interdisciplinary Centre for Law & ICT (ICRI)

[www.icri.be](http://www.icri.be)